

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re Flint Water Cases

Judith E. Levy
United States District Judge

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This Filing Relates to:

WALTERS *et al.*, v. CITY OF FLINT *et al.*
Case No. 17-10164

MEEKS *et al.* v. UNITED STATES
Case No. 19-13359

/

SCHEDULING ORDER FOR MEEKS V. UNITED STATES

This Scheduling Order applies to the *Meeks v. United States* case.

The Court will enter additional or supplemental orders as necessary as the *Meeks* case progresses.

I. Bellwether Selection and Discovery

A. Census

Within thirty (30) days after entry of this Order, Plaintiffs' counsel shall provide the Special Master and counsel for the United States a single native Excel spreadsheet that contains at least the following information for each of the 728 *Meeks* Plaintiffs who were minors at the time of their alleged injuries:

1. Last Name
 2. First Name
 3. Middle Name or Initial (to the extent possible)
 4. Year of Birth
 5. Name of Parent or Guardian
- (hereinafter, “Census”).
- B. Plaintiff Fact Sheet**
- Within forty-five (45) days after entry of this Order, the parties shall submit to the Court an agreed-upon form of a plaintiff fact sheet or present their dispute on this issue to the Court for resolution. The fact sheet materials shall include specified authorizations for release of records and requests for specified documents which are in Plaintiffs’ possession, custody, or control (as those words are used in the Federal Rules of Civil Procedure 34(b)) (hereinafter, the fact sheet, authorization, and requests are collectively referred to as the “Plaintiff Fact Sheet” or “PFS”).

C. Disclosure Group

Within thirty (30) days after Plaintiffs providing the Census, the Special Master shall randomly select 40 Plaintiffs on the Census, using

a selection process agreed upon by the parties (in consultation with the Special Master) and that will result in the selection of a random sample (“Disclosure Group” or “Disclosure Group Plaintiff”). The Special Master shall first review the Census and may request clarifications or supplements if necessary. If the Special Master requests any such clarifications, the 30-day period shall start when any updated Census is provided to the Special Master.

1. Disclosure Group PFS

Within one-hundred twenty (120) days after the selection of the Disclosure Group, Plaintiffs’ counsel shall provide to the United States a completed PFS for each Disclosure Group Plaintiff. To the extent a Disclosure Group Plaintiff has been the subject of any discovery or fact sheets in any other federal or state cases regarding similar issues, Plaintiffs’ counsel shall provide such discovery responses along with the Disclosure Group Plaintiff’s completed PFS.

To the extent a Disclosure Group Plaintiff’s PFS is incomplete or not provided by the deadline, counsel for the United States notify Plaintiffs’ counsel within twenty-one (21) days thereafter and Plaintiffs’ counsel shall cure the insufficiency to the extent possible within thirty

(30) days after receiving such notification. If Plaintiffs' counsel is unable to cure the insufficiency within this deadline, the United States may present the dispute to the Court for resolution pursuant to the Court's Discovery Dispute Protocol.

2. Need to Supplement Disclosure Group

If less than 75% of the Disclosure Group Plaintiffs (*i.e.*, fewer than 30 of the 40) provide PFSs, then the Special Master shall use the aforementioned random selection process to select additional Plaintiffs from the Census to be part of the Disclosure Group. This supplemental selection shall be for twice as many Plaintiffs as necessary to bring the total Disclosure Group to 40 Plaintiffs. For example, if only 20 Disclosure Group Plaintiffs provide PFS (50% response rate), then the Special Master shall randomly select an additional 40 Plaintiffs to be part of the Disclosure Group (20 times 2). Plaintiffs' counsel shall provide to the United States completed PFS for these additional Plaintiffs within ninety (90) days after this supplemental selection. To the extent these additional Plaintiff's PFS is incomplete or not provided by the deadline, the parties shall follow the same notice, opportunity to cure, and dispute resolution process as in Section I.C.1 above.

The Parties shall notify the Special Master of the deadline for curing noticed insufficiencies. The Special Master shall conduct the supplemental selection within fourteen (14) days after Plaintiffs' deadline to cure noticed insufficiencies with PFSs. This supplemental selection process shall not prejudice the United States' ability to seek relief for insufficiencies related to any Disclosure Group Plaintiffs' PFSs.

D. Discovery Group

Within thirty (30) days after the completion of all the processes in Section I.C.1 and Section I.C.2 (if necessary), Plaintiffs' counsel and counsel for the United States shall each select four (4) Disclosure Group Plaintiffs to proceed through discovery ("Discovery Group" or "Discovery Group Plaintiff") for a total of eight (8) Discovery Group Plaintiffs. If the parties select the same Disclosure Group Plaintiff, the Special Master shall randomly select (using the aforementioned random selection process) as many Disclosure Group Plaintiffs as necessary to select a total of eight (8) Discovery Group Plaintiffs.

After the selection of the Discovery Group Plaintiffs, the United States may serve on each of the Discovery Group Plaintiffs no more

than thirty (30) requests for production of document and tangible things, twenty-five (25) interrogatories, and twenty-five (25) requests for admission, unless otherwise agreed to by the parties or by leave of the Court. These maximum numbers shall include sub-parts to any particular interrogatory, request for production, or request for admission.

Thirty (30) days after the selection of the Discovery Group Plaintiffs, counsel for the United States may also begin noticing depositions of Discovery Group Plaintiffs or other persons with knowledge relevant to the Discovery Group Plaintiffs' claims (except for depositions of experts disclosed under Rule 26(a)(2), which are addressed in Section VI below).

Within thirty (30) days after the selection of the Discovery Group Plaintiffs, the parties shall submit to the Court an agreed upon protocol for Federal Rule of Civil Procedure 35 medical examinations or present their dispute to the Court for resolution.

II. Rule 26(a)(1) Disclosures

Within sixty (60) days after this Order, the parties shall serve on each other initial disclosures under Rule 26(a)(1) relating to issues of

liability relevant regardless of the particular Plaintiffs to be selected in the bellwether process.

Within sixty (60) days after the selection of the Discovery Group Plaintiffs, the parties shall serve on each other any remaining disclosures required under Rule 26(a)(1) in order to proceed with the cases for each of the Discovery Group Plaintiffs.

III. Notice of Non-Parties at Fault

Within 91 days after the United States filing its answer to the *Meeks* complaint, the United States shall file its Notice of Non-Parties at Fault pursuant to MCR 2.112(K) (hereinafter, “Notices of Non-Parties at Fault”) that relate to issues of liability relevant regardless of the particular Plaintiffs to be selected in the bellwether process.

Within thirty (30) days after the Fact Discovery Deadline (Section V below), the United States may submit additional Notices of Non-Parties at Fault that are specific to the Discovery Group Plaintiffs.

IV. Discovery of the United States

After this Order is entered, Plaintiffs may serve on the United States no more than thirty (30) interrogatories, fifty (50) requests for production, and forty-five (45) requests for admission, unless otherwise

agreed to by the parties or by leave of the Court. These maximum numbers shall include sub-parts to any particular interrogatory, request for production, or request for admission. After this Order is entered, Plaintiffs may also notice additional depositions of United States employees.

V. Fact Discovery Deadline

The parties shall complete all fact discovery within twelve (12) months after the selection of the Discovery Group Plaintiffs (“Fact Discovery Deadline”). All discovery requests must be served reasonably in advance, and no later than thirty days before, the Fact Discovery Deadline.

VI. Meet and Confer for Future Scheduling Orders

Within thirty (30) days after the selection of the Discovery Group Plaintiffs, the parties shall submit to the Court an agreed upon (or competing) scheduling order(s) to continue to prepare the *Meeks* case for trial by addressing, among other things:

- A. Discovery of experts to be disclosed under Rule 26(a)(2), including treating physicians;

B. Dispositive motion (Rule 56 and Rule 12(h)(3)) and *Daubert* motion practice; and

C. Process for selecting Discovery Group Plaintiffs for trial.

VII. Adult *Meeks* Plaintiffs

The United States contends that the 350 adult *Meeks* Plaintiffs failed to exhaust administrative remedies prior to filing suit, and therefore this Court lacks subject-matter jurisdiction over their claims. Within sixty (60) day from entry of this Order, the United States may file a motion to dismiss on this issue and, if so, the Court will decide this issue before discovery commences with respect to the adult *Meeks* Plaintiffs' claims.

IT IS SO ORDERED.

Dated: October 13, 2022
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 13, 2022.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager